

MEMORANDUM OF AGREEMENT

BETWEEN

U.S. DEPARTMENT OF HOMELAND SECURITY IMMIGRATION AND CUSTOMS ENFORCEMENT

and

NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES

I. PURPOSE

The purpose of this Memorandum of Agreement (MOA) is to set forth the responsibilities of the Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE) and the State Identification Bureau (SIB) regarding implementation of the Secure Communities (SC) initiative related to biometric interoperability. SC is a comprehensive ICE initiative which includes the utilization of advanced biometric and communications technology to share information among law enforcement agencies (LEAs) so ICE can more efficiently identify, detain and remove from the United States aliens who have been convicted of a criminal offense and are subject to removal, have been previously deported and who illegally reentered the country, or who are subject to removal because they pose a homeland security concern or threat to public safety, consistent with ICE's enforcement priorities to protect national security and ensure public safety.

For the purpose of SC, the SIB and the state and local LEAs will continue to operate pursuant to the Federal Bureau of Investigation's (FBI) Criminal Justice Information Services (CJIS) Division's established policies and agreements. This MOA does not affect a state's existing relationship with the FBI CJIS Division. Neither the SIB nor any state or local LEA that is subject to this MOA will be responsible for determining an individual's immigration status or whether a particular conviction renders an individual removable pursuant to the Immigration and Nationality Act (INA) or for enforcing federal immigration law. ICE is solely responsible for enforcing federal immigration law.

II. AUTHORITY

INA provisions regarding identification, detention, arrest and removal of aliens (8 USC §1226(c); 8 USC §1226(d); 8 USC §1226(e); 8 USC §1227(a) (2); and 8 USC §1228); the INA provision regarding liaison activities with internal security officers and data exchange (8 USC §1105); FY 2008 DHS Appropriations Act (Pub. L. No. 110-161, 121 Stat. 1844, 2365 (2007)); and NYS Correction Law §621.

III. THE GOALS OF SECURE COMMUNITIES

ICE is committed to improving community safety by transforming the manner in which information is shared between the federal government and state and local LEAs. The Secure Communities initiative deploys advanced technology to LEAs and relies on information sharing between federal agencies. The initiative also promotes sound prioritization by ICE officers consistent with the Department of Homeland Security's priorities by focusing ICE resources most heavily on threats to national security and public safety.

ICE leverages business and technical agreements between the DHS United States Visitor and Immigrant Status Indicator Technology (US-VISIT) Program's Automated Biometric Identification System (IDENT) and the Federal Bureau of Investigation's (FBI) Criminal Justice Information Services (CJIS) Division Integrated Automated Fingerprint Identification System (IAFIS). The combined biometric and communications technology is known as IDENT/IAFIS Interoperability.

As noted, this MOA does not affect a state's existing relationship with the FBI CJIS Division. Rather, the MOA builds on and enhances that relationship. Neither the SIB nor any state or local LEA that is subject to this MOA will be responsible for determining an individual's immigration status or whether a particular conviction renders an individual removable pursuant to the INA.

- A. ICE will employ a risk-based approach to immigration enforcement, consistent with the priorities of the Department of Homeland Security.
 - i. This risk-based approach will build on the ICE Criminal Alien Program (CAP), which is currently in use in all federal and state prisons.
 - ii. The risk-based approach classifies aliens convicted of a criminal offense into three levels, starting with those who present the greatest threat:

Level 1: aliens convicted of "aggravated felonies," as defined in § 101(a)(43) of the Immigration and Nationality Act, or two or more crimes each punishable by more than one year, commonly referred to as "felonies".

Level 2: aliens convicted of any felony or three or more crimes each punishable by less than one year, commonly referred to as "misdemeanors"; and

Level 3: aliens convicted of crimes commonly referred to as "misdemeanors."

iii. ICE is committed to identifying aliens convicted of criminal offenses who are subject to removal. Based on threats to national security and public safety, ICE continues to exercise discretion in taking enforcement action in cases of aliens identified through biometric interoperability who are subject to removal. In addition to prioritizing national security and public safety, ICE prioritizes enforcement involving aliens who are convicted of crimes, fugitives, or have already been deported and have returned again in violation of the law. At no time shall this MOA be construed to limit the discretion of ICE in managing detention resources or making enforcement decisions. This MOA does not amend the Immigration and Nationality Act.

B. To facilitate the goals of SC, ICE is partnering with DHS components, including U.S. Citizenship and Immigration Services (USCIS), Customs and Border Protection (CBP) and the US-VISIT Program. ICE federal interagency partners include the Department of State, Department of Justice (DOJ), Bureau of Prisons, Executive Office for Immigration Review, Executive Office of United States Attorneys, U.S. Marshals Service and FBI CJIS Division.

IV. STATE IDENTIFICATION BUREAU (SIB) RESPONSIBILITIES

A. The SIB responsibility under this MOA begins when the LEA submits a Criminal Answer Required (CAR) request, as appropriate according to CJIS procedure, to SIB of the state in which the individual is being booked. SIB will then electronically send the fingerprints to the FBI CJIS Division. Receipt of the CAR will initiate a search of both IAFIS and US-VISIT IDENT. However, National Fingerprint File (NFF) states send fingerprints to the FBI CJIS Division only at the time of the initial arrest. Second or subsequent criminal bookings in the NFF states result in a Criminal Print Ident (CPI) file maintenance message to the FBI CJIS Division. In the case of a subsequent arrest for a NFF state, SIB will forward a CPI file maintenance message instead of a CAR to FBI CJIS Division. There is no change in IAFIS processing.

B. If there is a match in IDENT, and the SIB has the technical capabilities to receive the response message, CJIS transmits the search results in a joint IDENT Data Response (IDR) and Immigration Alien Response (IAR) to the SIB. The SIB will in turn relay that response to the local LEA. If the SIB does not have the technical capability to receive or relay the response message, CJIS, at the request of the SIB, will not send the SIB either the IDR or IAR match message but all other communication currently routed to or from the SIB to the FBI will be unaffected by this agreement. A "no match IDR" in IDENT will be generated and routed in the same manner as an IDR and IAR.

V. ICE RESPONSIBILITIES

- A. Once fingerprint information is received by IAFIS, it will be cross-checked against the DHS US-VISIT IDENT system.
- B. Upon receipt of an Immigration Alien Query (IAQ) from the FBI CJIS Division that there has been a match with the subject's fingerprint in IDENT, ICE Law Enforcement Support Center (LESC) will conduct an immigration status determination.
- C. In consideration of available resources, ICE will process an alien for removal proceedings and take the alien into custody after completion of the alien's criminal sentence or when the alien is released from local custody in accordance with ICE's enforcement priorities.
- D. ICE will rely on establishing in the field a "24/7" IDENT/IAFIS Interoperability response capability and may utilize video teleconferencing (VTC) to streamline the process of identifying and removing aliens convicted of a criminal offense.

VI. PERIOD OF AGREEMENT

This MOA shall be effective upon signing by both parties and will remain in effect until terminated by either party in accordance with the Section (below): MODIFICATIONS AND TERMINATION.

VII. DISPUTE RESOLUTION

The parties agree that, should any disagreements arise as a result of this MOA, the first attempt at resolution shall occur at the program office level with the area(s) of disagreement reduced to writing and submitted to the appropriate program office point of contact (POC). If a resolution cannot be reached at this level, the disagreement will be raised to the agency level in accordance with component procedures.

VIII. MODIFICATIONS AND TERMINATION

This MOA may be modified at any time by mutual written consent of both parties.

This MOA will remain in effect from the date of signing until it is terminated by either party. Either party, upon 30 days written notice to the other party, may terminate the MOA at any time. A termination notice shall be delivered personally or by certified or registered mail and termination shall take effect 30 days after receipt of such notice.

Either party, upon written or oral notice to the other party, may temporarily suspend activities under this MOA when resource constraints or competing priorities necessitate. Notice of termination or suspension by ICE or the SIB shall be given to the POCs found in Appendix A. The temporary suspension of activities will take effect immediately upon receipt of such notice.

Use of IDENT/IAFIS for the purposes of racial and/or ethnic profiling or other activity in violation of the Fourth Amendment of the United States Constitution is not permitted and may result in the suspension of the local jurisdiction engaged in the improper activity. ICE reserves the right to take appropriate remedial action if necessary.

IX. COSTS AND EXPENDITURES

Parties to this MOA are responsible for their own costs associated with carrying out activities under this MOA. Nothing in this MOA is intended to imply that either Congress or state or local legislatures will appropriate funding for activities under this MOA.

X. RELEASE OF INFORMATION TO THE MEDIA AND OTHER THIRD PARTIES

SIB may, at its discretion, communicate the substance of this MOA to law enforcement professional organizations expressing an interest in the law enforcement activities to be engaged in under this MOA. It is ICE practice to provide a copy of this MOA to requesting media outlets only after both parties have signed the MOA. Local LEAs are authorized to do the same. However, the release of statistical information regarding the SC initiative will be coordinated with the ICE Public Affairs Office POC identified in Appendix B.

SIB hereby agrees, to the extent authorized by law, to coordinate with ICE regarding information to be released to the media regarding actions taken under this MOA. The POCs for ICE and the SIB for this purpose are identified in Appendix B.

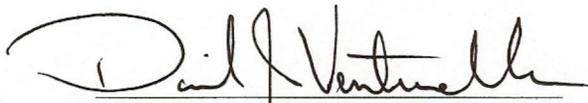
XI. SUMMARY OF ICE AND STATE LAW ENFORCEMENT AGENCY RESPONSIBILITIES

This MOA does not, nor is it intended to, nor shall be construed to create any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal.

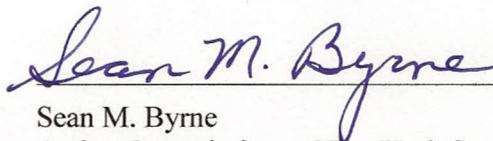
By signing this MOA, each party represents it is fully authorized to enter into this MOA and accepts the terms, responsibilities, obligations and limitations of this MOA.

Date: Dec. 27, 2010

Date: December 28, 2010



David J. Ventrella
Assistant Director, Secure Communities
Immigration and Customs Enforcement



Sean M. Byrne
Acting Commissioner, New York State
Division of Criminal Justice Services

APPENDIX A

Points of Contact

The ICE and SIB points of contact for purposes of implementation of this MOA are:

For the SIB:

Joseph N. Morrissey
Deputy Commissioner
Division of Criminal Justice Services
4 Tower Place
Albany, NY 12203-3702
(518) 485-
(518) 457-3089 Fax

For ICE Enforcement and Removal Operations (ERO):

Christopher Shanahan
Field Office Director
Enforcement and Removal Operations
26 Federal Plaza, Room 1105
New York, NY 10278
(212) 264-


Michael T. Phillips
Field Office Director
Enforcement and Removal Operations
130 Delaware Avenue
Buffalo, NY 14202
(716) 551-


For ICE Homeland Security Investigations (HSI):

James T. Hayes
Special Agent in Charge
Homeland Security Investigations
601 West 26th Street, 7th Floor
New York, NY 10001

Lev J. Kubiak
Special Agent in Charge
Homeland Security Investigations
130 Delaware Avenue
Buffalo, NY 14202
(716) 551-
(716) 551-4920 fax


APPENDIX B

Public Information Points of Contact

Pursuant to Section X. of this MOA, RELEASE OF INFORMATION TO THE MEDIA AND OTHER THIRD PARTIES, the signatories will coordinate with the ICE Public Affairs Office regarding release of statistical information about Secure Communities and/or IDENT/IAFIS Interoperability and agree to coordinate appropriate release of subsequent information to the media regarding actions taken under this MOA. The points of contact for coordinating such activities are:

For the SIB:

John Caher
Public Information Officer
Division of Criminal Justice Services
4 Tower Place
Albany, NY 12203-3702
(518) 485-2995
(518) 457-3089 Fax

For ICE:

Lou M. Martinez
601 West 26th Street
Suite 700
New York, NY 10001
(646) 313-2716